IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.4379 OF 2005

Shamrao Namdeo Jagtap ...Applicant
vs.
The State of Maharashtra ...Respondent

Mr.Mangesh B. Shirsat for the Applicant
Ms Rajeshree Gadhvi, A.P.P. for State

CORAM: A.S.OKA,J.
DATE : AUGUST 5,2005

P.C.:

1. Heard Advocate for the Applicant and the learned A.P.P. for State. F.I.R. is filed by one Akaram Ananda Bhise, Branch Manager of Satara Sahakari Bank Limited, Ghodapdeo Branch for commission of offence under Sections 465, 467, 468,471 406,420 read with Section 34 of the Indian Penal Code. In the F.I.R. it is alleged that one Baban Eknath Malakamir applied for housing loan to Ghodapdeo Branch of Satara Sahakari Bank on the basis of various documents for acquiring a flat. He applied for housing loan of Rs.3,75,000/-. It is alleged that on 20th January 2003 an employee of the bank one Arvind Salunkhe was instructed to inspect the flat for verification. However, the flat could not be inspected as it was closed. The loan proposal was forwarded to the Applicant who was the then Branch Manager and with his recommendation on 31st January 2003 a loan of Rs.3,00,000/- was sanctioned. Accordingly, a Pay order was issued on 8th February 2005 in the sum of Rs.2,91,500/- in the name of the builder. The

borrower repaid a sum of Rs.58,025/- to the bank. In January 2005, it was revealed that the flat in respect of which a loan was advanced does not belong to the borrower. The allegation in the F.I.R. is only against the borrower on the ground that the fabricated documents were produced by him. The F.I.R. is filed alleging commission of offence under Sections 465,467,468,471,406,420 read with Section 34 of the Indian Penal Code. Though there is no allegation against the Applicant in F.I.R., the case of the prosecution seems to be that the Applicant disbursed loan on the basis of fabricated documents.

2. The application made by the Applicant for anticipatory bail before the Sessions Court has been rejected by order dated 8th July 2005. Only operative part of the order is produced by the Applicant. It is stated that till today a reasoned order is not ready.

3. The learned A.P.P. has produced necessary material against the Applicant. The perusal of the report submitted by the bank employee Arvind Salunkhe dated 20th January 2003 discloses that he found that the flat in question belongs to borrower and there was no tenant occupying the said flat. It is recorded in the report that the flat could not be opened and therefore inspection of the flat could not be carried out. On the said report an endorsement has been made by the

Applicant that the loan should be disbursed only after re-verification of the flat. The proposal was forwarded by the Applicant on 23rd January 2003 which was approved by the Superior Officers on 30th January 2003 and thereafter the loan has been disbursed.

4. The learned A.P.P. on instructions of the Investigating Officer stated that the Applicant is not involved in any other transaction. The proposal for loan prepared by the Applicant discloses that before submitting the proposal, opinion of the legal adviser was taken and legal adviser certified that equitable mortgage can be created in respect of the flat in question. The inspection report discloses that the staff member who inspected the flat reported that the flat stands in the name of the borrower. The only allegation against the Applicant seems to be that there was nothing on record to show that before the loan was disbursed, an inspection of the flat was again carried out. At this stage it appears that the proposal for loan was examined by the superior officers of the bank and it was approved without any condition of re-inspection of the flat and only after the proposal was approved, the Applicant has released the loan. It appears from the record that before recommending the grant of loan, the Applicant obtained opinion of the legal adviser of the bank on the documents submitted by borrower. In the F.I.R. there is no allegation made against the Applicant. A reliance

is placed by the learned A.P.P. on the order passed this Court in companion matter where this Court has rejected the Application for anticipatory bail. However, the role played by the present Applicant is completely different. Considering the material on record it is obvious that custodial interrogation of the Applicant will not be required. Suitable conditions can be imposed for ensuring the presence of the Applicant for the purposes of the investigation.

5. Hence I pass the following order :

i) In the event of the arrest of the Applicant in connection with C.R.No.106 of 2005 registered with Byculla Police Station, the Applicant shall be enlarged on bail subject to furnishing P.R.Bond in the sum of Rs.25,000/- (Rupees twenty five thousand) with one or two sureties in the like amount.

ii) The Bail is granted subject to condition that the Applicant will attend the concerned Police Station on every Saturday between 4.00 p.m. to 7.00 p.m. till the filing of the charge sheet and will cooperate for the purposes of investigation.

iii) The Bail is granted subject to condition that the Applicant shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with

the facts of accusation against him so as to dissuade him from disclosing such facts to the Court or to the Police Officer/investigating agency. The Applicant shall not tamper with the prosecution evidence.

iv) Any observation made in this order shall not be construed as any finding or any expression of opinion on the merits of the case at the time of trial.

v) This order will enure to the benefit of the Applicant only till charge sheet is filed. Thereafter, he will be free to apply to the appropriate Court for appropriate relief.

vi) Application is disposed of in above terms.

vii) The parties to act upon an authenticated copy of this order.

JUDGE